

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
YELLOW CORPORATION, et al.,	)	
	)	Case No. 23-11069 (CTG)
Debtors.	)	

**DECLARATION OF WILLIAM D. SULLIVAN IN SUPPORT OF MULTIEMPLOYER  
PENSION PLANS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, William D. Sullivan, pursuant to 28 U.S.C. § 1746(2), declare the following under penalty of perjury:

1. I am an attorney and partner with Sullivan Hazeltine Allinson LLC, counsel for the Funds<sup>1</sup> in the above-captioned action.

2. Attached hereto as **Exhibit A** is a true and correct copy of the transcript of the June 12, 2024 hearing held before the Court in the above-captioned action.

3. Attached hereto as **Exhibit B** is a true and correct copy of documents produced by Debtors during discovery in the above-captioned action that are Bates stamped YELLOW-MEPP\_0042745 – YELLOW-MEPP\_0042747.

4. Attached hereto as **Exhibit C** is a true and correct copy of a document produced by Debtors during discovery in the above-captioned action that is Bates stamped YELLOW-MEPP\_0042888 – YELLOW-MEPP\_0042893.

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<sup>1</sup> The “Funds” are ten multiemployer pension plans: New York State Teamsters Conference Pension and Retirement Fund, Road Carriers Local 707 Pension Fund, Teamsters Local 641 Pension Plan, Western Pennsylvania Teamsters and Employers Pension Fund, Management Labor Pension Fund Local 1730, International Association of Machinists Motor City Pension Fund, Mid-Jersey Trucking Industry & Teamsters Local 701 Pension and Annuity Fund, Teamsters Local 617 Pension Fund, Trucking Employees of North Jersey Pension Fund, and Freight Drivers and Helpers 557 Pension Fund.

5. Attached hereto as **Exhibit D** is a true and correct copy of documents produced by Debtors during discovery in the above-captioned action that are Bates stamped YELLOW-MEPP\_0042738 – YELLOW-MEPP\_0042739.

6. Attached hereto as **Exhibit E** is a true and correct excerpted copy of the deposition transcript of Darren Hawkins taken on June 7, 2024.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2024.

/s/ William D. Sullivan  
William D. Sullivan

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
Case No. 23-11069 (CTG)  
YELLOW CORPORATION,  
*et al.*, (Jointly Administered)  
Debtors. Courtroom No. 7  
824 North Market Street  
Wilmington, Delaware 19801  
Wednesday, June 12, 2024  
12:00 p.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE CRAIG T. GOLDBLATT  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Allyson Smith, Esquire  
KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS INTERNATIONAL LLP  
601 Lexington Avenue  
New York, New York 10022  
For MFN Partners: Eric Winston, Esquire  
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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 APPEARANCES (CONTINUED):

2 For Central States: Andrew Herink, Esquire  
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Chicago, Illinois 60631

5 For the MEPP Pension Funds: Edward Meehan, Esquire  
6 GROOM LAW GROUP  
1701 Pennsylvania Avenue, N.W.  
7 Washington, DC 20006

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25

INDEX

MOTIONS:

PAGE

Agenda

Item 7: MFN Partners, LP, MFN Partners GP, LLC,  
MFN Partners Management, LP, and MFN  
Partners Management, LLC Motion to Quash  
Subpoenas to Appear at a Deposition  
[Filed: 5/31/24] (Docket No. 3565)

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Agenda

Item 8: Letter to Judge Goldblatt Regarding  
Discovery Disputes relating to MFN and  
It's Affiliates [Filed: 5/31/24]  
(Docket No 3563)

Court's Ruling:

30

1 (Proceedings commenced at 12:00 p.m.)

2 THE COURT: Good morning, all -- or good  
3 afternoon, or maybe good exactly noon. This is Judge  
4 Goldblatt. We are on the record in In Re Yellow Corporation,  
5 which is Case No. 23-11069.

6 We are proceeding by Zoom because I believe all we  
7 have is a discovery dispute and perhaps an update on status,  
8 but why don't I stop talking and pass the virtual podium to  
9 Ms. Smith to let us know what is on the agenda for this  
10 hearing. Ms. Smith.

11 MS. SMITH: Good afternoon, Your Honor. Allyson  
12 Smith, Kirkland & Ellis, for the debtors.

13 You are correct that the only item on today's  
14 agenda is the discovery dispute which we do not believe the  
15 debtors are implicated in, but I am happy to give a very  
16 quick update as to the other two matters that are not going  
17 forward today.

18 The Realterm Landlord matters we do believe we  
19 have resolved those and we are working with parties to  
20 finalize the terms that we expect to submit in the very near,  
21 near term.

22 The second item is, what we refer to as, the email  
23 destruction motion. That has been adjourned until later this  
24 month. I also believe that we have a means to address what,  
25 otherwise, would resolve all of the objectors concerns, but

1 we also have a (indiscernible) to confirm that.

2 THE COURT: Okay. Very well. That is very  
3 helpful. I appreciate that.

4 I guess I am happy, unless there is anything else,  
5 to hear from the parties with respect to the discovery  
6 matter.

7 Mr. Winston.

8 MR. WINSTON: Good afternoon, Your Honor. Eric  
9 Winston, Quinn Emanuel, on behalf of MFN Partners.

10 Your Honor, there are two dueling discovery  
11 matters. One is our motion to quash depositions and then the  
12 other is Pension Funds motion to compel production of  
13 documents, though they also raised in their letter the  
14 deposition. So, in many ways they are truly dueling.

15 I thought it might make sense, unless Your Honor  
16 has any views differently, that I explain what we believe to  
17 be the issues and our arguments, not repeating what is in the  
18 papers, and then presumably the Fund will do the same as  
19 well, then however this goes this goes. I thought that might  
20 make sense since this is really a mirror image of discovery  
21 papers.

22 THE COURT: Mr. Meehan, any objection to  
23 proceeding in that fashion?

24 MR. MEEHAN: No objection, Your Honor.

25 THE COURT: Very well then. Mr. Winston, you can



1 proceed.

2 MR. WINSTON: Thank you, Your Honor.

3 We tried to do this in our response letter to  
4 their letter, the one filed on June 10th, Docket 3626, that  
5 there are really two substantive matters at issue. The first  
6 was they called document requests one and two, and also, they  
7 seek depositions on it, relates to perpetuation internal  
8 valuations, projections, analysis and the like that MFN had  
9 relating both to pension withdrawal liability as well as any  
10 projected distributions that might occur in a restructuring  
11 whether in court or out of court. They seek both documents  
12 and depositions for that.

13 As laid out in the papers, and certainly the Funds  
14 counsel knows this has been out position for months, is we  
15 believe all that is irrelevant. It's irrelevant to what is  
16 actually this proceeding, which is a claim objection by the  
17 debtors against the Funds. And whatever MFN has -- and I will  
18 get to the proprietary nature in a second, but whatever MFN  
19 actually has cannot, under any circumstance, either approve  
20 or disprove the allowance of these claims. It is truly  
21 irrelevant.

22 They served these document subpoenas, which  
23 started this, even before MFN had joined the objections.  
24 They were in response to the debtors objections. We said this  
25 all along, how could it possibly make a difference whatever

1 or MFN or for that matter any other creditor or shareholder  
2 ever think internally.

3           One of their responses has been, well, you might  
4 have had communications with the debtors and we want to have  
5 notes to those communications. I learned earlier this week  
6 that the debtors did, in fact, produce to the Funds any  
7 communications on these topics to the Funds actually  
8 prepetition and post-petition. This dispute is solely about  
9 prepetition. This dispute is totally about prepetition.  
10 From what I understand is the universe of documents, like  
11 less than a handful, if any, that is consistent with what we  
12 thought which is there isn't going to be anything, but it  
13 doesn't change the view by everybody, at least as far as I  
14 know, objecting to the Funds claims it literally makes no  
15 difference. It cannot make a difference to what is allowed or  
16 not, what MFN ever thought at all.

17           We repeatedly asked for authorities to support  
18 their views and even in the letter and the response they have  
19 identified none. Part of the reason for that is its pretty  
20 universal at this stage that bankruptcy courts simply do not  
21 allow discovery into opposing parties internal views of the  
22 value in almost every circumstance. Its certainly a claims  
23 objection can fall within that category. We cited cases, we  
24 cited Your Honor's earlier ruling regarding lease assumption  
25 issues. It's the same analysis; its simply irrelevant and

1 its obviously very prejudicial the parties to be forced to  
2 reveal what they think.

3           The second issue, I think, is even more bizarre  
4 and that is they have sought discovery of whether MFN relied  
5 upon statements by the Funds prepetition in acquiring the  
6 stock of Yellow as an argument against the debtors reliance  
7 on whatever statements were made by the Funds prepetition  
8 that supports their claim of objections. When we heard this,  
9 we said, again, whatever MFN might have relied upon is truly  
10 irrelevant to whether the claims should be allowed or not.  
11 The debtors reliance, at best, is at issue, but if you have  
12 any concerns we are not going to testify to any of this  
13 stuff.

14           They seem to accept that for documents because  
15 they need proposed stipulations and after a little bit of  
16 modifications, which they accepted, we have a pre-stipulation  
17 that confirms MFN at the trial in August or September is  
18 never going to introduce any evidence and the debtors are not  
19 going to introduce any evidence of MFN relying on its  
20 irrelevant, which makes sense, its an easy give. If there was  
21 any concerns about that we put that to rest. That actually  
22 did resolve the document requests that they had sought.

23           Thus, it was very surprising to us they still want  
24 to take a deposition. I cannot understand what is the  
25 purpose of it at this stage when whatever they would happen

1 to get in a deposition, we would never be able to  
2 (indiscernible) anyway. So, I promised not to repeat what is  
3 in the papers, so I am hoping I am honoring that promise, but  
4 that is the sum and substance of the argument. There is  
5 simply no possible way whatever they are seeking will ever  
6 make a difference to whether the claims should be allowed or  
7 not.

8 Unless Your Honor has any questions, I rest.

9 THE COURT: No, I don't. Thank you, Mr. Winston.

10 I am happy to hear from Mr. Meehan or whomever. I  
11 presumed it was you because you have argued before me on much  
12 of these matters, but I don't mean to slight anyone else who  
13 intends to make the argument on your side.

14 MR. MEEHAN: Your Honor, this is Mr. Meehan.  
15 Actually, Mr. Herink is going to lead the argument from  
16 Central States and the MEPPs that I represent.

17 THE COURT: Got it. My apologies, Mr. Herink.  
18 Let me give you the opportunity to be heard and apologies.

19 MR. HERINK: Good morning, Your Honor. Thank you  
20 very much. This is my first time before you; although, I  
21 have been more of a, you know, long time listener first time  
22 caller.

23 THE COURT: I don't have quite that type of  
24 audience reach, but I appreciate it.

25 MR. HERINK: I am going to go through very briefly

1 what we consider our argument to be and then in the process  
2 of that hopefully respond to a few things that Mr. Winston  
3 said.

4           So, I think one thing that MFN and Central States  
5 agree on is there are only two bucket categories that, or  
6 whatever you want to say, are discovery requested issues  
7 here. Let me lay out what those steps are.

8           The first is document requests one and two,  
9 limited in the ways we noticed in our May 31st letter to the  
10 Court, and deposition topics one and two. Those are both in  
11 the same ballpark stating the same thing. Specifically, they  
12 seek documents and testimony regarding prepetition analysis  
13 and predications about the withdrawal liability potentially  
14 owed by the debtors and prepetition analysis and predications  
15 regarding any potential distributions to equity holders like  
16 MFN.

17           This first set of documents is relevant for two  
18 reasons. First, Mr. Winston focused on internal MFN  
19 documents. We certainly are seeking that as part of what we  
20 are seeking. Those internal documents and other documents  
21 that don't involve debtors, analysis and predictions that  
22 were not sent to or received by debtors, but instead were  
23 just internal MFN analysis and predictions are analysis and  
24 predictions shared provided by others to MFN. These are  
25 relevant to debtors arguments including the internal

1 analysis.

2 THE COURT: So, Mr. Herink, can I stop you there  
3 because I saw the discussion in the papers about equitable  
4 arguments and I confess I was a little puzzled by it. So,  
5 let me just share with you my overarching view of what this  
6 case is about as I see it and I don't know if that will  
7 obviate the concern.

8 I do see that the debtor -- so, look, as I  
9 understand the dispute the statute imposes withdraw  
10 liability, right, for an employer's, you know, allocable  
11 share of unfunded pension -- I'm sorry, of vested benefits,  
12 the unfunded vested benefits, right. I understand there is a  
13 question that I have got to resolve about whether in light of  
14 the American Rescue Plan Act there are or are not unfunded  
15 vested benefits.

16 The debtors, you know, do sort of make, at some  
17 level, the argument in which they say the Funds would be  
18 compensated twice for the same injury if they both get the  
19 congressional grant and they get withdraw liability. Now, at  
20 least as I see that issue if its relevant at all, and I'm not  
21 sure it is, its relevant only to the question of  
22 congressional intent. I have got a statutory question. I am  
23 not here to decide who I think is -- who if I were king, I  
24 would decide should get the money.

25 I've got a statutory question, Congress has

1 written words, I've got to read those words and to the  
2 extent, under applicable law, I should take account of the  
3 applicable regulations then I will address those. But it is  
4 not about what I think is too much or what I think is fair.  
5 So, as I -- I am not sure what you are describing as the  
6 equitable argument that the debtor makes is relevant at all,  
7 but if it is its relevant only to triangulate at what  
8 Congress would have intended and that is all.

9           So, assume for a moment that is how I view my job  
10 and the question that I have got to decide. If that is the  
11 case what is then the relevance of this first category of  
12 materials that you are seeking from MFN?

13           MR. HERINK: Yes. I understand your point to be  
14 that there isn't really an as applied equitable argument that  
15 debtors could make. There can be some type of, I guess,  
16 equitable argument regarding what Congress intended. That is  
17 aligned, I think, with our view of the case, but  
18 respectfully, Your Honor, this issue will probably be  
19 appealed up to decision makers of the other decision makers,  
20 is my first point, that may view the issue differently and  
21 may give credence to debtors equitable arguments.

22           Secondly, debtors are going to make those  
23 equitable arguments in their papers and we want to have all  
24 the ammunition and facts that we need in order to reply to  
25 those regardless of whether Your Honor is going to take those

1 very seriously or not.

2 THE COURT: Okay. So, look, I hear you. My view  
3 of the world is every case has one Judge at a time and while  
4 that case is before that Judge that Judge's job is to call  
5 balls and strikes to the best of their lights based on what  
6 is in front of them. So, its true someone might disagree.  
7 If they disagree, I will get reversed and I will deal with  
8 it. It presumably will come back or it won't come back.  
9 While it's in front of me I think my charge is to do the best  
10 I can by my lights.

11 Okay. I want to give you the chance to make your  
12 argument, but I also want to be clear about how I'm thinking  
13 about things to the extent that is helpful to the parties.

14 MR. HERINK: It did help, Your Honor. Thank you.

15 So, continuing on with this first set of  
16 documents. You know, even internal MFN analysis,  
17 (indiscernible), we contend would be relevant because the  
18 debtors are claiming that from an equitable perspective  
19 Central States recovering the full amount of its withdraw  
20 liability, or I guess having a claim for the full amount of  
21 its withdraw liability, would be inequitable to equity  
22 holders like MFN because it would result in them not  
23 recovering anything.

24 So, we think, again, setting aside the strength of  
25 that argument, whether Your Honor agrees with it, we think



1 that in order to clearly and fairly respond to that argument  
2 we need to know what MFN's expectations were and their  
3 knowledge; you know, what information they had prior to the  
4 petition date filed because if MFN clearly expected to get  
5 nothing in this case, we believe that is relevant to the  
6 equities. It's a different argument if MFN went into this  
7 case with eyes closed not knowing, you know, that they could  
8 potentially recover nothing versus eyes wide open knowing  
9 that it was a long shot for them to ever recover anything.

10 I also want to stress that these internal MFN  
11 analysis aren't the only thing we seek. We also are seeking  
12 analysis and predications that involve debtors. So, if MFN  
13 sent, you know, a prediction or analysis to debtors, or the  
14 representatives or vice versa, debtor sent one to MFN, we  
15 think that is relevant.

16 THE COURT: Mr. Herink, Mr. Winston represented  
17 earlier that you served that request on the debtors and that  
18 the debtors responded by saying they will provide responsive  
19 documents, is that correct?

20 MR. HERINK: We did serve a request for these  
21 documents on debtors. They produced, I believe, a small  
22 subset of what we requested, but we are requesting more in  
23 line with our original request. So, they have not yet  
24 responded as to whether they are going to produce those  
25 additional documents.

1 THE COURT: Help me with this, explain to me why -  
2 - let's say the debtors create a piece of paper that -- just  
3 explain to me the theory of the relevance. Imagine there was  
4 communication -- and I am not -- to the extent they produced  
5 it I am not encouraging them to revisit it, but I am  
6 struggling with the theory of relevance in the first instance  
7 of communication between the debtor and its equity holder as  
8 it relates to what these withdraw liabilities are. Explain  
9 to me how that effects what the unfunded vested benefits look  
10 like.

11 MR. HERINK: I don't believe it effects what the  
12 unfunded vested benefits look like. Let me answer that  
13 question straightforwardly.

14 THE COURT: Okay.

15 MR. HERINK: I think the relevance is something  
16 else. Specifically, debtors are making an equitable argument  
17 that we can't recover, you know, the full amount of withdraw  
18 liability. The law is clear that a party seeking to have  
19 equity applied must have fell back equitably.

20 THE COURT: I understand that, but if I am --  
21 look, I am going to be evenhanded here and if I am going to  
22 entertain the argument from the debtor then you are going to  
23 have a chance to respond to it. If the argument to which you  
24 are seeking discovery to respond to is one that is dead in  
25 the water, then I am not going to -- so, you know, I am going

1 to manage the litigation so that we direct it towards what  
2 actually matters, not, you know, a go down rabbit holes.

3           So, look, the debtor is on. I am happy to hear  
4 from them, but the notion that in resolving this claims  
5 dispute I should be doing anything other than answering the  
6 statutory question like doesn't resonate with me. The notion  
7 that like I as a matter of moral philosophy should decide how  
8 much money should be given on the one hand to the Funds and  
9 on the other hand to the debtors estate based on my abstract  
10 vision of justice isn't the job that I have.

11           I am applying the statute in light of the facts.  
12 I am not saying that there is no role. Look, again, as I said  
13 before, on the question of -- if the debtor wants to make an  
14 argument about congressional intent, you know, I am not  
15 cutting that off at the pass; although, I think what really  
16 matters is what Congress meant in 1980 when it passed the  
17 Multi-Employer Pension Act Amendments.

18           In any event, I don't see the notion that this is  
19 MFN's expectation of the debtors expectation about what  
20 distribution to its various constituents would be as bearing  
21 on this question. Look, if the debtor wants to say, no, we  
22 have got a real argument, we intend to make it and here is  
23 what it is they should jump in because I am generally  
24 inclined not to give you this discovery, but what is good for  
25 the goose is good for the gander. I am going to be even

1 handed about this.

2           So, Ms. Smith, let me hear from you. I am  
3 suggesting if the Funds suggestion of the debtors intent is  
4 correct, I am talking about narrowing what is at issue. Would  
5 I be wrong to do it that way.

6           MS. SMITH: Thank you, Your Honor.

7           The debtors (indiscernible) going forward with a  
8 legal unfairness argument. As you already acknowledged, when  
9 the Funds include the special funding assistance they did so  
10 because they made the statement that they expected to receive  
11 zero on account of withdraw liability. So, I think  
12 (indiscernible) argument is more of an estoppel argument. I  
13 do not disagree with Your Honor.

14           THE COURT: So, by estoppel argument I want to  
15 understand sort of what you -- so, it's based on their  
16 statements, and they made statements to Congress to whom?

17           MS. SMITH: I believe it was to PBGC and other  
18 governmental authorities when they were applying for the  
19 bailout. You know, in our view that's double dipping, but  
20 our arguments and our position is not, as I said, an unfair -  
21 -

22           THE COURT: Okay. So, Mr. Herink, I hear your  
23 point. I don't think -- well, let me -- my initial reaction  
24 is I think that that is -- that that point is different from  
25 the abstract one that you are suggesting which is it's just

1 too much money and, therefore, unfair. So, I don't really  
2 see the discovery you are seeking as necessary to respond in  
3 fairness to that argument, but let me give you a chance to  
4 explain why I am wrong.

5 MR. HERINK: If you don't mind, Your Honor, and  
6 you can totally say this is out of line, if debtors could  
7 confirm on the record that their only equitable argument is  
8 an equitable estoppel argument that may be useful in helping  
9 to resolve all of this.

10 THE COURT: Ms. Smith.

11 MS. SMITH: Again, I don't want to speak too much  
12 out of turn and I don't necessarily want to give away the  
13 legal strategy and argument that we continue to work on, but  
14 I don't want to limit the --

15 THE COURT: All right. Well, that is -- look, the  
16 point is not to put on the spot or trick you. That said, at  
17 the end of the day if I rule that you can't have this  
18 discovery, I am going to be evenhanded in my application of  
19 the principle. So, if you start hearing -- if I deny you  
20 this discovery and then we get to trial and then you start  
21 hearing from them lines of argument as to which you think  
22 that you were denied a fair opportunity to respond because of  
23 my ruling you will be entitled to be heard on that and maybe  
24 I shut down an argument that they would have intended to  
25 make.

1           To me, based on what I understand about the case  
2 there isn't anything that I see as relevant that the debtor  
3 could be arguing as to which what you are seeking would be  
4 responsive. So, at the moment, again I will hear you out, I  
5 am inclined to grant the motion to quash and to deny the  
6 motion to compel as it relates to this category of materials  
7 and carry that thread the rest of the way through the fabric.

8           So, if it means that you have an argument at trial  
9 that I should not hear some argument because I have deprived  
10 you of your chance to respond to it you will have a chance to  
11 say that when we get there.

12           MR. HERINK: Thank you, Your Honor. Just on this  
13 first category of documents I understand we are setting aside  
14 the second category which is deposition testimony on topics  
15 three and four, and we will get to that in a minute. Let me  
16 take one chance to perhaps change your mind here.

17           THE COURT: Please, that is what we are here for.

18           MR. HERINK: Yes. So, an equitable estoppel  
19 argument is still an equitable argument. If debtors are able  
20 to establish every element of their equitable estoppel  
21 argument, their prima facie element, it would still be  
22 relevant whether debtors are acting equitably because our  
23 view would be debtors cannot assert an equitable argument  
24 even if they can establish all the elements of it if they  
25 themselves are not acting equitably.

1 THE COURT: So, tell me what they are doing -- on  
2 your theory, what are you going to find that establishes that  
3 their conduct is inequitable.

4 MR. HERINK: Yes. Our theory, although I'm not  
5 going to say we're wedded to it, but it's something that we  
6 believe may very well be the case is that debtors, at the  
7 behest of MFN, their primary shareholder, the shareholder  
8 that has control of the company -- because keep in mind that  
9 treasury doesn't vote. Treasury is in a voting trust and  
10 they vote proportion with everybody else.

11 So, its important to keep in mind that in effect  
12 MFN controls the debtors. Our belief is that MFN and the  
13 debtors are working together, we are not sure who came up  
14 with this idea, but we believe MFN and the debtors are  
15 working together to take a very aggressive scorched earth  
16 litigation approach to the Funds claims because succeeding on  
17 that and knocking out Central States claims and the claims of  
18 the other Funds, which are also substantial, is, as a  
19 practical matter, and the equity committee pointed this out  
20 in their exclusivity filing, that as a practical matter it's  
21 the only way that equity will be in the money here.

22 THE COURT: Mr. Herink, I hear you and I  
23 understand your point. I don't think that that bears on the  
24 claims allowance dispute that is in front of me that the  
25 claims allowance dispute isn't about their motivation. This

1 is a balls and strikes question about applying the law of the  
2 facts. Their motivation, if you are right that they are  
3 improperly, you know, serving the interest of equity in a way  
4 that is harmful to other constituencies that bears on the  
5 exclusivity motion. You're right, its part of the argument  
6 that the creditors committee made, but I have decided that.

7           If you were to file a motion to appoint a Chapter  
8 11 Trustee and wanted this discovery, I am not encouraging  
9 that, but I'm not saying it's irrelevant to any issue that  
10 might ever be in front of me, but as to the issue that is, in  
11 fact, in front of me I don't think its relevant. So, I hear  
12 you. Again, I don't want to cut you short, but I don't see  
13 how the points you are making bear on the allowance or the  
14 disallowance of the claim.

15           MR. HERINK: I think I see which way the winds are  
16 blowing, Your Honor, but let me perhaps --

17           THE COURT: There is nothing unwise about telling  
18 me that I'm wrong. So, you won't hurt my feelings, I  
19 promise.

20           MR. HERINK: Thank you for that. The claims  
21 allowance process will inherently involve a determination as  
22 to whether debtors equitable estoppel argument applies  
23 because that is true, the claims allowance process does rope  
24 in the question of whether debtors are acting equitably. That  
25 is all I will say on that.



1           THE COURT: Okay. I hear you. Why don't we -- if  
2 there is anything else you want to make on this category let  
3 me give you that opportunity, but otherwise, it might make  
4 sense to move to the next category of materials.

5           Actually, before we get there, Mr. Herink, let me  
6 -- there is also -- Mr. Winston also made, with respect to  
7 the first category, the sort of narrower but pretty powerful  
8 point that in general we are highly reluctant to allow  
9 discovery into internal valuation analysis in any event. You  
10 know, the debtors asked me for the landlords internal  
11 valuation documents because they thought it would be helpful  
12 in the dispute we had over the assumption motion and my  
13 ruling there was I know why you want those, but we just don't  
14 allow discovery of those kinds of materials period.

15           Isn't that another reason? I don't know if that  
16 applies to every piece of paper that you are asking for, but  
17 doesn't that -- isn't that an independent reason to deny most  
18 of the discovery you are seeking?

19           MR. HERINK: I don't think so, Your Honor. We  
20 touched on this a bit in our opposition to the motion to  
21 quash. I agree there is a rule, more or less, that  
22 valuations are done by creditors, shareholders or anything  
23 equivalent to what is here is not going to be allowed for the  
24 purpose of showing value. We are not seeking this for the  
25 purpose of --

1 THE COURT: So, the reason for the rule that  
2 prohibits discovery is that once you get someone else's  
3 internal valuation analysis you basically can figure out  
4 their reserve price for negotiations over resolution and its  
5 not fair for one side to basically engineer the other sides  
6 internal analysis of where their prepared to resolve a  
7 dispute. So, that is, at least, in part the rational for  
8 prohibiting it. It's not just a restriction on the use of  
9 the documents. It's a restriction on obtaining the documents  
10 because of the enormous risk of prejudice that one could  
11 suffer if the other side -- if a litigation opponent obtained  
12 one's internal analysis of the dispute in front of the Court.

13 MR. HERINK: On that point let me say this: we are  
14 going to enter into a confidentiality agreement with MFN to  
15 the extent necessary.

16 THE COURT: Yeah, but it's not about your  
17 distributing it to third parties, its about your having it.

18 MR. HERINK: Yes, but I believe that the statement  
19 you just made assumes that we would be directly negotiating  
20 with MFN on these issues.

21 THE COURT: Okay.

22 MR. HERINK: It's the committee that would be  
23 negotiating (indiscernible).

24 THE COURT: I hear you. I understand your point.  
25 Let me allow you to proceed to the next point.

1 MR. HERINK: Thank you, Your Honor. Again,  
2 parties agree what the second category is as well, its topics  
3 three and four of the deposition subpoena. Here we are  
4 really just looking to find out and really confirm that there  
5 were not any statements relating to withdraw liability by the  
6 Funds that MFN is relying on or that MFN relied on.

7 As for the relevance of this, again, debtors have  
8 discussed how they're making equitable estoppel arguments.  
9 The contours of that argument, you know, based on responses  
10 to contention interrogatories that we have received have not  
11 really been fleshed out. Debtors have simply said, you know,  
12 not exclusively, the federal government relied on Central  
13 States statements. So, it's a very real possibility that  
14 there is some type of argument the debtors are making but  
15 have not yet disclosed that MFN relied on Central States  
16 arguments.

17 THE COURT: All right. Look, let me tell you  
18 this, the same principle applies. If I don't give you these  
19 documents, I am not going to hear at trial evidence of MFN's  
20 reliance. Again, I am happy to -- if the debtor wants to  
21 make that argument they should jump in and tell me that I am  
22 prejudicing their case by limiting the discovery, but I can't  
23 think of why -- this is a dispute -- I mean, the debtor is a  
24 legal entity.

25 I understand it's got constituencies, but I am not

1 sure why a shareholders reliance would alter the rights of  
2 the debtor unless they were acting as an agent of the debtor.  
3 To the extent they were acting as an agent of the debtor you  
4 would get that discovery, I think, from the debtor. So, I  
5 really don't see the relevance either of an argument the  
6 debtor would be making and, therefore, the need for you to  
7 have discovery in order to respond to it.

8 MR. HERINK: Yes. I agree that as a facial matter  
9 its not relevant. This is more just a matter of covering  
10 ourselves because we don't know exactly what debtors are --

11 THE COURT: I completely understand that. Look,  
12 it's your job to make sure that you are not surprised at  
13 trial and, therefore, to make your record by seeking the  
14 discovery and have them tell you no and have me rule no and,  
15 therefore, you are protected against unfair surprise. So, I  
16 am not faulting anyone for the fact that we are here with  
17 this. I am only sharing my effort to resolve it according to,  
18 sort of, usual principles.

19 MR. HERINK: Let me just have one more point on  
20 this if I may.

21 THE COURT: Okay.

22 MR. HERINK: On Friday we told debtors, look,  
23 topics three and four should be an even knockout. All MFN  
24 would need to do is stipulate that it didn't rely on any  
25 statements of any of the funds relating to withdraw

1 liability. MFN has refused to give that to us which kind of  
2 raises our antenna that there may be something that we are  
3 not getting and the equitable estoppel argument would turn to  
4 --

5 THE COURT: So, Mr. Herink, this is the point  
6 about corporate separateness that I was eluding to. If MFN  
7 relied on a statement that it made an investment, MFN -- you  
8 know, its true that they can participate in the claims  
9 allowance hearing, but their rights in that regard are  
10 entirely derivative of the debtors. They don't have an  
11 independent right. They have a right that is purely  
12 derivative of the debtors.

13 So, if they relied on a statement in making an  
14 investment decision and it turns out that -- you know, I'm  
15 not sure why that in the absence of the debtors reliance I am  
16 not sure it moves the needle on claims allowance. I am not  
17 even sure that the debtors reliance on the statement -- we  
18 will come back to that when we get there, but I don't --  
19 look, you are a hundred percent right that if I don't give  
20 you these documents, I will not hear from any one at trial  
21 that the claims should be disallowed because MFN relied on a  
22 statement that was made by the Funds.

23 I do think that part of the job of the Court in  
24 discovery disputes is to manage the cost of litigation by  
25 cutting off, sort of, rabbit holes early on and this seems to

1 me to be a rabbit hole. So, I am inclined to disallow the  
2 discovery and that has whatever consequence it has in terms  
3 of narrowing the available arguments at trial.

4 MR. HERINK: Thank you very much, Your Honor. I do  
5 want to give Mr. Meehan an opportunity to speak. I only  
6 represent Central States and he represents the other Funds  
7 and he may have additional things to bring up.

8 THE COURT: Very well. Mr. Meehan.

9 MR. MEEHAN: Thank you, Your Honor. Very briefly,  
10 Your Honor, I would say that the discussion today on the  
11 record on this issue, the back and forth, and clarifications  
12 coming from all sides has been very helpful. I think now we  
13 have a much better understanding of the limits and the even-  
14 handedness.

15 With that, Your Honor, I am satisfied other than  
16 to note that I did hear the debtor, you know, refer to an  
17 equitable estoppel argument and certain statements that that  
18 type of argument has only been raised with respect to a  
19 couple of points, not all. We can get into that in much more  
20 detail later. So, I have nothing to add other than really,  
21 Your Honor, thank you for the discussion. I think it's been  
22 very helpful.

23 THE COURT: Thank you, Mr. Meehan.

24 So, Ms. Smith, before I rule, I just want to make  
25 sure I'm being fair to you. I don't mean to put you on the

1 spot. I appreciate that you are not a movant here, but the  
2 necessary fact is that when you are dealing with what is  
3 essentially the scope of third party discovery the scope of  
4 the discovery you allow against a third party -- and here I  
5 am -- while MFN is a party in interest that has the right to  
6 appear and be heard, you know, my view is that that right is  
7 in a derivative capacity and that for the purposes of this  
8 dispute MFN in its actual own capacity is effectively in the  
9 shoes of a third party.

10           The resolution for disputes of third-party  
11 discovery will necessarily bear on what the Court thinks is  
12 relevant to the trial. So, I have heard you say you intend  
13 to make an argument about equitable estoppel, and we will  
14 deal with that when we get there, is there -- do you have any  
15 other concerns that -- because I am going to be evenhanded  
16 and by cutting off this discovery to the extent, you know, we  
17 find ourselves at trial and you're making an argument or your  
18 colleagues are making an argument as to which the Funds have  
19 a fair point that their unable fully to respond because I cut  
20 off discovery do you have any concern about, basically, the  
21 consequences of this ruling? Of a ruling that would  
22 basically deny the motion to compel and grant the motion to  
23 quash?

24           MS. SMITH: No, Your Honor.

25           THE COURT: Okay.

1 MR. WINSTON: Your Honor?

2 THE COURT: Yes.

3 MR. WINSTON: This is Eric Winston for MFN. May I  
4 just -- I know you are going to rule, can I -- I just want to  
5 state a couple of things on the record.

6 THE COURT: Of course. This is my job to give the  
7 parties a chance to be heard. So, please do.

8 MR. WINSTON: Very quickly. So, thank you for  
9 your commentary and hopefully your commentary can be  
10 reflected in your ruling. I will say literally everything  
11 you said in your commentary was raised in the meet and  
12 confer. So, I am glad to hear Mr. Meehan say there is  
13 clarifications. This is exactly what we have been telling  
14 them since March or -- whenever the meet and confer was that  
15 is when we first raised these points. So, none of this is  
16 surprising to me.

17 Number two, we will stand by the stipulations at  
18 trial which will confirm there will be no MFN statements  
19 introduced at trial for reliance by anybody. So, that is --  
20 we are sticking by that. So, they have exactly what they  
21 were searching for.

22 I want to say one more thing, because I just heard  
23 Mr. Herink say it, he said on Friday they asked for an  
24 additional stipulation. We did not include that in our papers  
25 because that was sent to us under Rule 408 which we honored.



1 I just want to make it very clear I'm a little disappointed  
2 that he's surprised by that, but just to be clear the reason  
3 why we did not agree to that stipulation is because its  
4 already been given to them and what was agreed to in the  
5 stipulations that are in our motion to quash. I will say no  
6 more.

7 THE COURT: I don't think that any of that  
8 requires, you know, further elaboration.

9 Let me just say I am going to grant the motion to  
10 quash and deny the motion to compel for the reasons  
11 suggested. I am of the view that the material sought is  
12 irrelevant. I -- you know, to the extent the argument is that  
13 its necessary to respond to an equitable argument I don't  
14 think that the question in this case is an equitable  
15 question. I think it's a legal question about how to make  
16 sense of the words Congress wrote and if applicable the  
17 regulations and how those apply to the on the ground facts.

18 The Court isn't going to entertain an argument  
19 that basically asks the Court on principles of equity to  
20 grant -- to allow or disallow the claim. It's under Section  
21 502 of the Bankruptcy Code and applicable non-bankruptcy law.  
22 This is not an equitable question, it's a legal question.  
23 So, therefore, the request as to equity at large are  
24 inapposite to the dispute and, therefore, irrelevant.

25 Again, I do understand the debtor intends to make,

1 what strikes me as, a more focused equitable estoppel  
2 argument. I don't have a view on the merits of that, but that  
3 will be what it will be. I don't think this discovery, as  
4 sought, responds to that.

5           So, that is my ruling. We will deal with to the  
6 extent any of the funds wants to make an argument at trial  
7 that some argument that is being made that it should in some  
8 form or fashion preclude some argument that is being made I  
9 will hear you then. I do think that it makes sense to narrow  
10 the dispute before the Court to the one that I believe is  
11 before me. I do think that the pursuit of, sort of, these  
12 concerns about equity at large are a side show and that in  
13 the interest of efficiency we ought to cut that off at the  
14 pass.

15           So, that is my ruling. I guess it would make  
16 sense if the parties don't mind submitting an appropriate  
17 order under certification reflecting that ruling. We will  
18 enter that order. Obviously, if to the extent future  
19 disputes arise you all know how to find me.

20           Anything else that I can do to be helpful to the  
21 parties?

22           MR. WINSTON: Nothing from MFN, Your Honor.

23           MS. SMITH: Nothing from the debtors, Your Honor.

24           MR. HERINK: Nothing from Central States. Thank  
25 you, Your Honor.

1 MR. MEEHAN: Nothing from the MEPPs. Thank you,  
2 Judge.

3 THE COURT: Okay. Thank you, Mr. Meehan.

4 Thanks to all of the parties. I think these  
5 letters and motions were presented clearly and helpfully. I  
6 appreciate the manner in which the issues were teed up. So,  
7 my thanks to all of you for that.

8 With that we are adjourned. Thank you.

9 (Proceedings concluded at 12:46 p.m.)  
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Tracey J. Williams

June 12, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable

Filed Under Seal

EXHIBIT B

Filed Under Seal

EXHIBIT C

Filed Under Seal

EXHIBIT D

# EXHIBIT E



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
)  
YELLOW CORPORATION, et al., ) Case No. 23-11069  
) (CTG)  
Debtors. )  
) RE: Docket  
) No. 2157

The remote Zoom Rule 30(b)(6)  
deposition of DARREN HAWKINS, called for  
examination, taken pursuant to the Federal Rules  
of Civil Procedure of the United States District  
Courts pertaining to the taking of depositions,  
taken before CAROLYN J. HAWKES, C.S.R., within and  
for the State of Illinois, on the 7th day of June,  
2024, at the hour of 8:00 a.m. CST.

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8  
9 ALSO PRESENT:

10 Mr. Uzo Dike, Kirkland & Ellis.

1 to swear in our first witness.

2 THE COURT REPORTER: And everyone  
3 stipulates that the witness can be sworn in  
4 remotely, correct?

5 MR. SULLIVAN: Correct.

6 THE COURT REPORTER: Mr. Hawkins, would  
7 you please state your name and current  
8 location, just city and state, for the  
9 record?

10 THE WITNESS: Darren Hawkins. Selmer,  
11 Tennessee.

12 (WHEREUPON, the witness was  
13 first remotely duly sworn.)

14 DARREN HAWKINS,  
15 called as a witness herein, having been first  
16 remotely duly sworn, was examined and testified as  
17 follows:

18 EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Good morning, Mr. Hawkins. Thank you  
21 for taking time to be with us here today. My name  
22 is Daniel Sullivan. I am an attorney for the  
23 Central States Southeast and Southwest Areas  
24 Pension Fund, which I'm going to refer to by the

1 Yellow companies could not have undertaken such an  
2 effort with PBGC if the Yellow companies  
3 determined that they wished to do so at the time?

4 MR. ESSER: Object to form. You can  
5 answer if you can.

6 BY THE WITNESS:

7 A. That question, I think I'm just going to  
8 have to have you ask it again.

9 BY MR. MEEHAN:

10 Q. Sure. Let me ask it and I'll try to  
11 tighten it.

12 A. Yup.

13 Q. Can you think of any reason why -- if  
14 the Yellow companies had wanted to work with PBGC  
15 on what the regulation should say about  
16 recognizing the special financial assistance, is  
17 there any reason why you could not have done that  
18 if you wished to do so?

19 A. At a company our size and with as many  
20 employees we had many times the Department of  
21 Labor, Department of Transportation would reach  
22 out to us and we would provide our opinion, other  
23 things on that.

24 If that happened from the PBGC, I'm

1 not aware of it, but that's a situation I could  
2 think of, that, you know, it's not uncommon at all  
3 for even the White House to reach out to a company  
4 like ours, you know, their National Economic  
5 Council, other things from that regard, but that's  
6 the best answer I can give to I think what you're  
7 trying to ask.

8 Q. Okay. And I think I can wrap up by just  
9 making sure I've got you is -- so although  
10 communications with government agencies about  
11 regulations that might concern Yellow were not  
12 uncommon, you don't know of any such communication  
13 between the Yellow companies and PBGC about this  
14 special financing assistance regulation. Did I  
15 get that right?

16 MR. ESSER: Object to form. You can  
17 answer.

18 BY THE WITNESS:

19 A. Yeah, not that I recall or that I am  
20 aware of.

21 MR. MEEHAN: Okay. Sir, I don't have any  
22 other questions. I indicated I would try to  
23 be brief, and I hope I achieved that. And  
24 thank you very much for your cooperation and



1 I, Carolyn J. Hawkes, Certified  
2 Shorthand Reporter within and for the State of  
3 Illinois, do hereby certify that, to-wit, on the  
4 7th day of June, 2024, appeared remotely before me  
5 DARREN HAWKINS, witness produced in a certain  
6 cause now pending and undetermined in the United  
7 States Bankruptcy Court for the District of  
8 Delaware.

9 I further certify that the said  
10 DARREN HAWKINS was by me first remotely duly sworn  
11 to testify the truth, the whole truth, and nothing  
12 but the truth in the cause aforesaid; that the  
13 testimony then given by said witness was reported  
14 stenographically by me, in the presence of the  
15 said witness, and afterwards reduced to  
16 typewriting; and the foregoing is a true and  
17 correct transcript of the testimony so given by  
18 said witness as aforesaid.

19 I further certify that the said  
20 deposition was adjourned as indicated herein.

21 I further certify that  
22 Counsel of Record appeared on behalf of the  
23 respective parties.

24 I further certify that I am not

1 counsel for nor in any way related to any of the  
2 parties to this cause, nor am I in any way  
3 interested in the outcome thereof.

4 In testimony whereof I have hereunto  
5 set my hand this 12th day of June, 2024, A. D.

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11 Carolyn J. Hawkes  
12 Certified Shorthand Reporter  
13 State of Illinois

14 CSR No. 084-003296.  
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